

LAKE COUNTY BOARD of ADJUSTMENT
August 9, 2017
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Frank Mutch, Steve Rosso, Merle Parise

STAFF PRESENT: Jacob Feistner, Rob Edington, Wade Humphries, Lita Fonda, Wally Congdon

Frank Mutch called the meeting to order at 4:02 pm

BECK VARIANCE & CONDITIONAL USE—FINLEY POINT (4:03 pm)

Wade Humphries presented the staff report. (See attachments to minutes in the August 2017 meeting file for staff report.)

Steve observed that the slope disturbance was given in terms of cubic yards rather than the square feet as used by the zoning regulations. Wade noted in the Finley Point zoning district, any disturbance of slopes over 25% required a conditional use. The applicant had stated the disturbance in cubic yards and he'd stayed with that. Steve said this gave the volume of disturbance but not the area being disturbed. Was the square footage known? Paul Walhood, the agent for the Becks, said the area was around 35 feet in length and 10 or 12 feet in depth.

Wade said that at the time the applications were submitted, engineering hadn't been completed. The Planning staff recommended a condition that the engineering be in place before the zoning conformance permit was granted.

On pg. 21 in condition #4, Steve asked if the Board was granting a lakeshore setback variance of 27 feet rather than 50 feet, thus changing the number listed there. Wade agreed. Steve was concerned that the intent of the regulations was to bring properties into compliance as structures wore out or damage occurred. They wouldn't get there if they kept allowing people to rebuild non-compliant structures. His other concern was that the 50-foot lakeshore buffer was to protect the water quality of the lake. If they were to allow this variance, mitigation to make sure the buffer was in as good shape as possible was important to him. On pg. 26, attachment #4 he asked if the lawn in front of the subject building ran to the lake. Paul said it ran to a poured concrete retaining wall on the lakeshore. Rob noted the retaining wall and boat house were permitted.

Paul Walhood thought Wade summed things up. He understood Steve's comment. At this point, they would start losing the house above it several years down the road if they didn't do something on that slope soon. They would be losing more than what was in the 50-foot zone. Steve outlined this property had 2 guest houses in addition to the main residence. The zoning regulations allowed one. The alternative that he saw was to anchor the slope in some way if they were having sloughing in front of the house and

remove the old cabin. He was concerned that rebuilding the non-compliant guest house could go on forever.

Frank related some history of the area. The area of the former Pine Glen Cabins was densely populated with what used to be cabins and had become homes and guest houses and so forth. The soils seemed unstable. From a boat, it looked like mostly clay. All kinds of sloughing went on, especially with the shearing action of waves in storms from the north. You got lakeshore erosion, unstable soils and a densely populated area that used to be cabins. People bought these places with the expectation that they could use them. It was hard for him to see how the density could be reduced. There was a lot of activity in those areas. He was surprised that neighbors hadn't come to comment.

Steve thought the owners had built a new home behind the subject cabin plus another guest house. It would be a different issue if it was the only one still there. Paul clarified the other guest house had been a Pine Glen cabin that was remodeled. The main house was the only new structure. Wade said it was built in 2007 per Cadastral.

Wally mentioned the 3 P's, where it was fine to preserve, protect and prevent. You couldn't promote so well. With a legal non-conforming use, if the purpose of the zoning was to make an existing non-conforming use go away, that crossed the transitional line to 'promote'. The minute you got to that line, that was where counties and cities got sued and lost a lot of money. Steve asked if it was okay to promote things if the things you were promoting were in the Growth Policy. Wally responded that helped you if they were in there and you couched it in the terms of marketing. You weren't just promoting something, you were preventing additional harm, preserving what you had left and preventing more harm that happened as a result of there being too many before. By doing that you were promoting a clean and healthful environment, a better beach, better water quality and whatever. You needed to be really careful when dealing with legal nonconforming use questions. What [Steve] said was fine but [Wally] needed the Board to think about this in the context of someone coming in and saying they had to do 60% because the hill fell. If the response was 'we're promoting the agenda to get rid of the buildings within 50 feet of the shore', that wasn't in the ordinance or the growth policy. You had to be careful to get your wording right.

Steve said it was important to have plants in the buffer zone, not buildings or impervious surface. If they were going to mitigate the variance and conditional use, they would want to strengthen the buffer. He had suggestions along those lines and asked what the Board thought about that. Frank said he had a place on the lake since 1980 including grass down to the lakeshore. He didn't agree with the 50-foot buffer on a philosophical level. He thought it took away a lot of property rights. He wanted to preserve the lake and was an environmentalist but thought balancing property right was important. If the buffer strip was that necessary, he thought there were a lot of lakeshore properties where they could do a case study like with retaining walls. If nutrients were bad, why not have a rule saying don't fertilize the lawn? Steve thought that was in some zoning districts. Frank suggested killing the geese as well.

Merle agreed with Steve. Where did you cut it off and look at this seriously? What was the cutoff date? It started with the Planning Board. Steve responded they had an opportunity [at this Board] when applications were made and came in front of the Board to look at the development of a piece of property and how that compared to the zoning district regulations. When one didn't follow the regulations, the Board looked at the purpose of the regulations and tried to interpret when it wasn't obvious about why some of the rules were put in. This zoning district did require buffers and talked about native plants and trees. He agreed there were a lot of properties around the lake that could be improved. [The Board's] opportunity existed when someone came before the Board. When someone wanted to continue the use of a structure that didn't meet the regulations, they had to interpret why the regulations didn't allow that now. He thought the reason [in this case] was that area was supposed to be a buffer for the lake. There were also some reasons involving impacts of visitors and other people boating on the lake who liked to see native landscaping rather than house after house up against the shoreline, so there was a view issue.

Steve said there were several kinds of reasons they'd like people to move back from the lake at least 50 feet. One thing with those examples would be to say you could rebuild this structure close to the lake but the buffer needed to be adequate to use the nutrients that were in the groundwater flowing towards the lake so those nutrients didn't get into the water and grow algae. The idea was to grow plants with those nutrients rather than growing algae in the lake. A variety of plants with different depths of roots would use different levels of water, which would be cleaner when it finally reached the lake. If the view was an issue, they might ask the property owner to think about the possibility of planting some trees when they were rebuilding the buffer so there wasn't an unobstructed view of the building and some flora and fauna were available to see.

Frank said that was philosophical. The boaters he knew liked to look at the buildings and pricey trophy homes. He didn't know of people living along the lake who wanted to ruin it. They could get some data and facts to help preserve the environment. Steve thought that existed. The buffers were written into zoning regulations because they worked. Scientific literature was available about how and why buffers worked. Frank said he meant they could see where there was no buffer and see if there had been significant degradation. Steve said the solution to pollution was dilution. They had a big lake. When a few lawns were treated with fertilizer and weed killer and that washed into the lake, the whole lake degraded and it was hard to tell where that came from.

Steve said that in the Findings of Fact on pg. 17 in item b, it talked about rebuilding past 60% of the real value of the structure. In the zoning regulations, it talked about 60% of the square footage. He suggested removing the term 'real value', which appeared in a couple of places. Jacob thought 60% of the floor area was more accurate. Steve suggested they cross out 'real value' again in item e on pg. 17. For item f on pg. 17 and 18, he added f.vii: "The vegetative buffer, being narrower than required, is maintained and improved if necessary based on a review by a buffer specialist." He gave some examples of possible improvements that might be recommended which might mitigate the impacts of having impervious surface in that 50-foot zone. Wade asked if a landscape

architect would work well with that. Steve thought the right one might. He would like to say a buffer specialist. Paul said that Stephanie did this also and would take care of this thoroughly. Frank asked if that promoted. Did it give the buffer specialist authority to make regulatory changes? Jacob said the zoning allowed a specialist to be brought in if need be. Steve said the buffer wasn't adequate because it was too narrow. Frank said there was no buffer. It was just a lawn. Steve asked if the fact that they were allowing someone to build within the buffer allowed them to try to mitigate the impacts of that building.

Jacob thought that what Steve was saying fell in line with the purposes of the zoning. In this case, they were guiding development to promote the natural environment around that structure. Enhancing the buffer was a good idea. He just didn't know that they wanted a buffer specialist to be the one who dictated what that buffer looked like. A suggestion or recommendation for a plan from that person would be a good idea. The zoning administrator should be able to look at that and see if it was in line with what the zoning required or if it was in excess. Frank suggested they add 'and the zoning administrator' to the end of the previously proposed added sentence. So f.vii would be, "The vegetative buffer, being narrower than required, is maintained and improved if necessary based on a review by a buffer specialist and the zoning administrator." Jacob said that could be tied to condition #5.

On pg. 18, Steve corrected item g in the second line of the italics from 'sure up' to 'shore up'. On pg. 19, item 4.i just mentioned sound building techniques with no mention of engineering evaluation and design. Did they want to mention the recommendation of the engineering evaluation in there? They could add to the end of 4.i, "based on an engineering evaluation of the existing conditions and an engineering design that will ensure future sloughing and shifting of soils will be arrested." On pg. 21 in condition #5 after 'plan' at the end of the first line, they could add 'based on recommendations from a buffer specialist and planning administrator.' In the first bullet on #5, 'except where the structure is located' should be added after, 'to mitigate impacts from the proposed development.'

Jacob returned to condition #4, which had been discussed earlier (see pg. 1 of these minutes). This one had been debated by staff. If they moved the setback to 27 feet, the applicants could build the structure as they liked. If the setback was kept at 50 as a nonconforming structure, they would be required to build it back exactly as it was. Frank asked if the setbacks listed were intended as a description of the existing requirements. Steve checked if the variance sought was to be within 27 feet of the lake. Jacob explained the variance was to do more than 60% reconstruction. By leaving the setback in place, it was still a nonconforming structure and could not be expanded upon. If they moved the setback to 27 feet, it was outside the setback and could be expanded. It was a fine line. Steve referred to condition #3, which outlined the approval. Did they want to add 'and the reconstruction in the same footprint'? Jacob said they could handle that in the zoning conformance.

On pg. 22 in condition #8, Steve removed 'stamped' before 'engineered plan' and added 'designed by a licensed professional engineer' after 'engineered plan'.

Steve asked Paul if he felt the changes were reasonable. Paul said yes. He thought they all had the same idea. The main reason for this whole thing was to keep the vegetation. They were doing exactly what Steve wanted anyway. At some point it would all be in the setback and they would have to deal with it at that time, if that was the case

No public present to comment.

Motion made by Steve Rosso, and seconded by Frank Mutch, to accept the findings of fact in the report as modified and the conditions as modified, and approve the conditional use to disturb slopes greater than 25% and a variance to reconstruct more than 60% of the floor area of a legally noncompliant guest house. Motion carried, all in favor.

WASIK CONDITIONAL USE & VARIANCE—EAST SHORE (4:52pm)

Rob Edington noted that owner Brian Wasik and his agent Tiffani Murphy of Western Montana Land Services (aka Carstens) were here and presented the staff report. (See attachments to minutes in the August 2017 meeting file for staff report.) He mentioned that it might be possible for the applicant to petition the Commissioners to abandon the villa strip, which would eliminate the need for the variance but that would need review and approval by the Commissioners and there would be no guarantee of outcome. Staff also noticed the house was built on 4 x 4 timbers with concrete deck block. Requiring the house to be moved could create additional issues with slope and so forth, and reducing the variance would be the most reasonable [result]. Additional public comment was received yesterday in the form of a phone call from Jonathan Wright. Rob reported that Jonathan had no objection to the variance and conditional use request. His concerns focused more on the easement and enjoying the view from near the switchback, and whether the property line was moving. Rob assured him that a surveyor could be hired to help him locate the line if there were questions about the property line. Regarding ingress and egress, he had inherited the property. It appeared a cabin used to be on the property to the south that had fallen in. The road might have been used and that access also might have an easement.

Steve confirmed with Rob that the replacement system would be another holding tank. Rob added a deed restriction went with the property that the agent was working on. It would essentially satisfy Environmental Health. The current graywater and blackwater system was illegal and needed to be replaced.

Brian Wasik said he made the seller look into this. Brian already took the graywater system completely out. He was trying to make it right with the County and legal.

Tiffani Murphy referred to condition #6. She spoke with MDOT. Because the slope was greater than 10% on the lot, MDOT was not willing to issue a permit. Their other option was another access on Road B-200 through Tribal property. They were working with the

Tribe to obtain easements for Brian to legally use that as his primary access. Frank asked if the road was grandfathered. Tiffani replied because they widened the logging road, the grandfathering clause was taken out. She didn't want them to barricade the access. There was an existing easement for the neighbors. In case of something catastrophic, she wanted to leave the road open as emergency access. The primary access would be through Tribal land. Rob thought it might be worth it for the applicant to contact emergency personnel in advance in case there was an emergency. Zoning might not address that concern but it might be in the owner's best interest.

Steve suggested wording to change #6. Frank thought it was a moot issue. The lack of access would trigger other actions. Steve said an approach permit was a requirement in the conditions to begin with. Subdivision requirements required access. When it was an existing parcel outside of subdivision, [what happened]? Frank asked why the requirement was there. Jacob explained that comment was always requested from MDT for projects involving the highway. Generally they said they had no comment. For this one, there was obvious work within the right-of-way that they hadn't been aware of or permitted. He didn't know whether or not the County had the authority to require that. He suggested that Wally could weigh in on that.

Wally said the property had legal access. There was a way to go from the public way onto a piece of ground. Steve's example was you could park on the highway and walk up the road. Wally affirmed. The issue wasn't going up the hill. MDOT's concern was the 10% grade coming down the hill. You wouldn't be able to stop and in winter you would slide in front of the cars and cause a wreck. The problem became how you dealt with that. The problem was the lack of a practical access for getting out. Sometimes MDOT looked for enough landing at the bottom to stop a car or logging truck. The room was insufficient at the site to build a landing at the bottom. The access was there. The question was if it could comply with the new standard. For it to be a condition, the best way to put it would be that he should find a practical access to the premises for his uses. An approach permit could not be guaranteed but he needed to find a practical access in acknowledgement that [the County] understood he couldn't come back after the County and say, "You didn't make me get the approach permit." They couldn't because they didn't have jurisdiction. It should be something practical for emergency services, ingress, egress, etcetera. This was one of many unbuildable properties on the East Shore and one of many unpractical roads. Tiffani mentioned he did have safe access through the Tribal ground on B-200. Rob showed this. Brian said it came in from the north. Access to the property to the south was also discussed. This property was also involved in the easement. Various history was discussed.

Frank returned to condition #6 on pg. 20. Jacob suggested taking out "Prior to the issuance of a zoning conformance" and having #6 read "The applicants shall be responsible for obtaining practical access to the subject lot and existing development."

On pg. 16, in the Findings of Fact item b, Steve suggested removing "in order to remove" after "25%". He contemplated if other changes were necessary to reflect the approach permit discussion but things seemed fine.

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the variance and conditional uses as stated in the staff report subject to the changes made in the findings and conditions. Motion carried, all in favor.

MINUTES (5:22 pm)

Motion made by Steve Rosso and seconded by Don Patterson, to approve the June 14, 2017 meeting minutes as written. Motion carried, all in favor.

Motion made by Steve Rosso, and seconded by Merle Parise, to approve the July 12, 2017 meeting minutes as written. Motion carried, all in favor.

OTHER BUSINESS (5:24 pm)

None.

Frank Mutch, chair, adjourned the meeting at 5:24 pm.